

WQIA for CBE-09-092 – 3633 Bridgewater Drive.

Staff report for the July 8, 2009, Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant	Performance Contracting
Land Owner	James T. Duguay, Jr, Inc.
Location	3633 Bridgewater Drive, Williamsburg, Virginia
Parcel Identification	3841770006
Staff Contact	Patrick Menichino      Phone: 253-6675

**Project Summary and Description**

Mr. James T. Duguay, of Performance Contracting, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a segmental stone block retaining wall 90 LF in length, and the placement of approximately 1000 SF of fill/backfill. The lot is located in Mill Creek Landing was recorded after the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property was identified thereby requiring a 100' landward RPA buffer. The lot is 0.692 acres in size and the RPA buffer encompass approximately 78% of the lot or 0.546 acres. The proposed retaining wall and fill will encroach into the seaward 50' RPA buffer.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (30) native shrubs in a 5' wide mulch planting bed to filter runoff. The amount of plantings proposed exceeds the standard mitigation planting requirements of the County.

Staff evaluated the request for the retaining wall, and consider it to be an accessory structure, and therefore according to the Ordinance it cannot be granted by administrative exception. The Board has in the past reviewed and granted exceptions for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicant has applied for an exception to allow for 90 LF of segmental stone block retaining wall and approximately 1000 SF of fill.
2. The applicants have submitted an RPA mitigation planting plan that exceeds the standard mitigation planting requirements of the County.

3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

### **Brief History**

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. In 2004 the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 78% of the lot.

In this case, the exception request is for a segmental stone block retaining wall within the seaward 50 foot buffer and which does not qualify for an administrative waiver because the request is for an accessory structure. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Water Quality Impact Assessment (WQIA)**

Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree, and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 90 SF of impervious area and approximately 1000 SF of fill within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

### **Recommendations**

Staff has evaluated the request for the retaining wall and considers it to be an accessory structure and therefore according to the Ordinance it cannot be granted by administrative exception. To be consistent with the ordinance requirements, Staff can not support the approval of this exception request for an accessory structure.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. The plan should be revised to require the installation of filter cloth behind the wall and all stone backfill material shall be washed number 57 stone.

3. The RPP mitigation plan should be revised to include the installation of (2) native trees as replacement for the (1) 18" tree proposed for removal.
4. The (30) mitigation shrubs proposed shall be 3-5 gallon size, and 15"-18" tall minimum. The species of the shrubs shall be approved by the Environmental Division prior to installation.
5. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
6. This exception request approval shall become null and void if construction has not begun by July 8, 2010.

Staff Report prepared by: \_\_\_\_\_

Patrick T. Menichino  
Compliance Specialist

CONCUR:

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Scott J. Thomas,  
Secretary to the Board

Attachments: